

CITY OF NEWTON
IN BOARD OF ALDERMEN

December 8, 2015

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following AMENDMENT to SPECIAL PERMIT/ SITE PLAN APPROVAL for a CHANGE in NONCONFORMING USE granted under #416-12(3) to reconfigure the rear parking lot to create five parking stalls and to waive the parking stall width requirement, and the ALTERATION of a NONCONFORMING USE granted under #416-12(3) by changing the operational controls for a fitness studio, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Alderman Marc Laredo:

1. The change in operational controls for the fitness studio, a service use allowed on-site per special permit #416-12(3), to allow longer hours of operation and an increase in the maximum number of customers from the allowed three (3) to eleven (11), will not be substantially more detrimental to the neighborhood than the previous operational controls for the use as the petitioner has agreed to certain stipulations regulating the daily intensity of these uses. (§30-21(b); §7.8.2.C.)
2. The literal compliance with the dimensional controls for the width of parking stalls is impracticable and not in the public interest due to the size and shape of the existing lot. The surrounding neighborhood, especially along Commonwealth Avenue and the carriageway, contain a significant amount of on-street parking. (§30-19(h)(2)(a) and §30-19(m); §5.1.8.B and §5.1.13)
3. The extension of the nonconforming use on the site through the modified operational controls for the fitness studio on the first floor as developed and operated will not adversely affect the neighborhood, as there is adequate parking along Commonwealth Avenue or the carriageway for customers to park. (§30-24(d)(2); §7.3.3.C.2)
4. The petitioner's proposed site enhancements, which consist of a reconfigured rear parking lot, landscape plantings, and a screened/fence enclosure for trash receptacles, will minimize off-site impacts and enhance the visual appearance of the site.

PETITION NUMBER: #416-12(4) and (5)

PETITIONER: Main Gate Realty, LLC and Julia Williamson

LOCATION: 242-244 Commonwealth Avenue, on land known as Section 61, Block 13, Lot 11, containing approximately 7,452 square feet of land

OWNER: Main Gate Realty, LLC

ADDRESS OF OWNER: 242 Commonwealth Avenue
Chestnut Hill, MA 02467

TO BE USED FOR: Parking Stall Width Waiver, Reconfiguration of Parking Lot, and Expanded Operational Controls for Fitness Studio

EXPLANATORY NOTES: The references to the Zoning Ordinance above and those that follow, include both the sections in effect at the time the petition was filed and the sections as renumbered in the November 1, 2015 issue of the Zoning Ordinance. §30-21(b)/§7.8.2.C., to amend an existing special permit, Board Order #416-12(3), to reconfigure the rear parking lot to create five stalls; §30-19(h)(2)(a) and §30-19(m)/§5.1.8.B and §5.1.13, to allow reduced parking stall width; and to further amend an existing special permit, Board Order #416-12(3) to permit more than three customers, and change the allowed hours of operation.

ZONING: Multi-Residence 1 district

This special permit supersedes, consolidates, and restates provisions of prior special permits #416-12(3) to the extent that those provisions remain applicable. Only those conditions and provisions from such prior special permits set forth below that remain applicable, and are still in full force and effect, are set forth in this special permit. Any conditions in such prior special permits not set forth in this special permit are null and void.

Approved subject to the following conditions:

Conditions solely associated with Special Permit/Site Plan Approval, Board Order #416-12(5):

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with the plan entitled:

- a. Proposed site plan titled "242 Commonwealth Ave., Chestnut Hill, MA – Certified Plot Plan", annotated with proposed site improvements, prepared, signed, and stamped by Peter Nolan, Professional Land Surveyor for Peter Nolan & Associates, LLC, and dated April 8, 2015.
2. The fitness studio shall have a class schedule not to exceed 36 classes per week.
3. The fitness studio shall maintain at least a 15 minute gap between scheduled classes at the fitness studio, so as to minimize the number of clients on-site at any one time.
4. The class sizes in the fitness studio shall be limited to one (1) instructor and up to eleven (11) clients, and the average number of clients per class within any given week shall not exceed 9, said average being calculated on the basis of a 36-class weekly schedule. The petitioner agrees to compile weekly attendance records and voluntarily make such records available for review by the City to confirm compliance with this Condition #4. To the extent permitted by the Massachusetts Public Records Law, any such records received by the City shall be considered confidential commercial information, voluntarily provided by the petitioner, and exempt from public disclosure. This condition shall supersede Conditions #22 and #23, set forth below.
5. The hours of operation for the fitness studio shall be 7:00 a.m. to 9:30 p.m. Monday-Friday with no more than three classes beginning as early as 6:15 a.m., 8:00 a.m. to 5:00 p.m. on Saturday, and 9:00 a.m. to 5:00 p.m. on Sunday. For only this use, this condition shall supersede Condition #13 set forth below.
6. The changes to the operational controls governing the nonconforming fitness studio, a service use, shall expire three (3) years following the date of approval unless extended by the Board of Aldermen upon petition which extension may be granted without public hearing unless the Board of Aldermen shall vote to require a public hearing. If in the future an extension is not granted by the Board of Aldermen, all relief granted under Conditions #1 through #5, above, shall be null and void, and any subsequent use of the tenant space occupied by the fitness studio shall comply with all the current and applicable requirements of the Newton Zoning Ordinance and Conditions #7 through #23, set forth below.

Conditions associated with this Special Permit/Site Plan Approval, Board Order #416-12(4):

7. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with the plans entitled:
 - a. Proposed site plan titled "242 Commonwealth Ave., Chestnut Hill, MA – Certified Plot Plan", annotated with proposed site improvements, prepared, signed, and stamped by Peter Nolan, Professional Land Surveyor for Peter Nolan & Associates, LLC., dated April 8, 2015.

8. All trash and recycling areas on-site shall be maintained in a sanitary condition at all times. The collection/emptying of such receptacles shall only occur on weekdays between 8:00 a.m. and 5:00 p.m.
9. The basement level shall not be rented for another tenant or used commercially by the property owner, but may be used as storage by the first floor tenant spaces.
10. The first floor of the building shall not be occupied by more than two separate tenants, and shall be limited to office, service or retail uses with low parking demand/turnover. If in the future the conversion of either first floor tenant space is to a more intensive retail use, such as a convenience store or any similar use that generates more than 20 hourly vehicle trips, the petitioner shall be required to amend this special permit.
11. The on-site parking facility, with five (5) designated parking stalls, shall be used for employee parking only, designed to prohibit tandem parking configurations, and assigned to specific tenants as follows: Two (2) parking stalls for each of the first floor tenants and one (1) parking stall for the deliveries.
12. No parking for customers shall be allowed in the on-site parking facility for any use. Customers shall utilize on-street parking along Commonwealth Avenue or the carriageway.
13. No operation of any business on the site is allowed between 10:00 p.m. and 7:00 a.m.
14. There shall be at least 15 minutes between appointments for any office or service use occupying the first floor tenant spaces, so that new customers are not arriving before the previous customers have left.
15. Prior to March 31, 2016, the petitioner shall provide a revised site plan showing the reconfigured parking lot, landscape plants along a portion of the property line abutting the property at 252 Commonwealth Avenue, and screen/fenced enclosure for trash receptacles. The plan shall be approved by the Director of Planning and Development and City Engineer.
16. Prior to July 29, 2016, the petitioner, at their sole expense, shall have installed the site improvements approved under Condition #15.
17. The property owner shall maintain all landscaping on the site in good condition. Any plant materials that become diseased or dies shall be replaced on an annual basis with similar materials.
18. The petitioner shall record a certified copy of this board order for the approved Special Permit/Site Plan with the Registry of Deeds for the Southern District of Middlesex County.
19. A copy of such recorded board order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
20. Any future change in tenants shall require a building permit through the Inspectional Services Department.

Conditions incorporated from Board Order #416-12(3):

21. All buildings associated with this special permit/site plan approval shall be located and constructed consistent with the plan entitled:
 - a. Ground Floor Plan, 242 Commonwealth Avenue, unsigned and unstamped, created by Jay C. Walter, AIA, dated October 17, 2010.
22. No more than three (3) customers for the service use shall be allowed on-site at any one time.
23. No more than three (3) staff members for the service use are allowed on-site at any one time during operating hours.